

MAKING EU FUNDS WORK FOR PEOPLE AND THE ENVIRONMENT



Case studies from Central and Eastern Europe

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Executive summary

The aim of this publication is to present examples of ISPA¹ project implementation, as well as to draw conclusions and propose recommendations for improvement of European Union (EU) funds appraisal and selection procedure in central and eastern European (CEE) countries. Experience so far suggests that current practice does not guarantee the most efficient and transparent use of EU assistance in terms of sustainability principles.

The conclusions in this report are based on the experiences of CEE Bankwatch Network and Friends of the Earth Europe in monitoring pre-accession aid and in-depth analyses of seven projects financed by the EU ISPA pre-accession program in different CEE countries. We understand that shortcomings have occurred due to the nature of the ISPA program: it has been intended as a learning mechanism for the use of the EU Cohesion Fund. However the lack of mitigation measures available to address identified project deficiencies, as well as the lack of an available mechanism for avoiding repeated mistakes, leaves us sceptical about the positive educational outcomes of ISPA. Based on the ISPA implementation experience, we consider that urgent changes to the procedures and guidelines for the forthcoming EU aid programs are needed to prevent inefficient use of EU taxpayers' money in the future.

CEE Bankwatch Network and Friends of the Earth Europe have conducted constant monitoring of the ISPA Program implementation and its impacts since the program began. A set of recommendations designed for the improvement of EU pre-

accession aid were drawn up in 2002 in the publication *Billions for Sustainability? Lessons learned from the use of pre-accession funds*²

The focus of the current publication is to use a case study approach in order to assess the appraisal process of ISPA projects, with particular attention to the quality of the Environmental Impact Assessments (EIAs). The case studies gathered from seven EU accession countries - Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Poland and Slovakia - illustrate a variety of problems related to the development and approval mechanisms attached to ISPA projects. While the other cases focus on the quality of the appraisal of ISPA projects in the acceding countries, the Slovak case deals with the role of the EU in providing grants that might generate undue profits for private operators of environmental infrastructure.

This publication summarises the problems within the different parts of the appraisal process (regarding environmental, social and economical benefits). Recommendations are given concerning both the current management of the ISPA program and the future Cohesion projects in the next budgetary period. In addition, the seven case studies provide a more detailed explanation of the problems highlighted in the general observations as well as giving specific country and project related recommendations.

Full versions of the seven case studies can be viewed at:

www.bankwatch.org/issues/eu/mngomaterials.html

¹ Instrument for Structural Policies for Pre-Accession (ISPA)

² <http://www.bankwatch.org/issues/eu/mngomaterials.html>

Overview: getting it right before it's too late

The European Union ISPA program has been in operation in ten EU accession countries for more than four years already. The ISPA 'window' is now over since the biggest part of the funds available, for the six year running of the program, has already been allocated for specific projects. The ISPA program will shortly be replaced by the EU Cohesion Funds in the eight acceding countries¹. These obviously raise even more attention.

We consider that an evaluation at this stage of the ISPA program's maturity is crucial as the program was supposed to be the test for countries' readiness to manage the Cohesion Funds. Current statistics show that about 20 percent of the money committed has actually disbursed². The danger remains that for the sake of showing a maximum use of ISPA money the quality of the projects is compromised. Since the day of accession on May 1, 2004, a Cohesion Fund is available for the new members, providing larger amounts of grant assistance for transport and environment infrastructure projects. It is therefore vital that lessons are drawn from the current programming and implementation of ISPA, ensuring that future funding benefits people and the environment.

Lessons learned

Whereas in the interest of the proper management of Community assistance granted under ISPA provision should be made for effective methods of appraising, monitoring, evaluating and controlling operations, specifying the principle governing the evaluation, defining the nature and the rules governing the monitoring, and laying down the action to be taken in response to irregularities or failures to comply with one of the conditions laid down when assistance under ISPA was granted; Principles of the ISPA Council Regulation No 1267/1999, p.14

As the Council's Regulation on ISPA indicates, the appraisal is one of the key mechanisms, or even the most important one, for the proper use of the funds. Furthermore, appraisal of the projects applying for public funds is crucial as it should guarantee that projects do not have negative environmental and social impacts and support democratic processes in the country.

The analysed projects in this book show numerous contradictions between on the one hand the preparation and implementation of ISPA projects on the ground and on the other hand the ISPA program principles and EU legislation.

As a result, we conclude that the project appraisal procedure is not rigorous enough to avoid controversial project selection and/or the European Commission intentionally compromising the quality of projects.

CEE Bankwatch Network and Friends of the Earth Europe have shown in previous reports on pre-accession funds that frequently the accession countries have not had sufficient capacity to prepare good quality projects. Therefore, it is understandable that the European Commission, in the first years of the program, made several compromises in terms of the project quality to speed up the disbursement of EU grants. However, since the ISPA program has served as a learning process for the future use of larger Cohesion Funds, there are two key questions which follow:

1. Shouldn't the European Commission and accession countries' governments seek mechanisms to mitigate the deficiencies of the approved projects, when most of the projects are still in the early stages of implementation and changes could still be made?
2. Should compromises with project quality and efficiency continue to be made when the ISPA program is already at a mature stage and the mistakes already iden-

¹ The ISPA program was not applicable for Malta and Cyprus that acceded to the EU.

² The mini ISPA report 2000-2002, http://www.europa.eu.int/comm/regional_policy/funds/ispa/pdf/mini_en.pdf

tified in the learning process are in need of correction?

There is also a third aspect concerning bad quality projects. Some of the monitored cases clearly demonstrate that non-compliance with the ISPA principles and even EU legislation are intentional - they have not been caused by a lack of implementation capacity. Badly conducted EIAs, lack of transparency and neglect of public opinion are often apparent in cases where governments want to push forward projects with dubious environmental, social or economic benefits.

The current procedures as well as institutional setups do not prevent such irregularities from occurring. If tolerated any longer, undemocratic decision-making and the use of public funds for private interests could prove to be a very serious negative impact on the development of democratic processes in the CEE countries.

Main conclusions from the case studies

(a) Appraisal process

A close look at the responsibilities of the different bodies involved in the appraisal mechanism with the aim of identifying the main procedural shortcomings is necessary. An underlying question throughout our examination has been how the transparency and accountability of the responsible institutions is ensured.

The appraisal process is supposed to guarantee that projects receiving ISPA co-financing are:

- in compliance with EU environmental legislation
- beneficial for a majority of the population in projects areas
- economic and financially viable

The ISPA regulations state that project applications must contain, besides basic information about the project (name of the responsible body, nature of the measure, a brief description, cost and localisation, implementation timesheet), the following information:

- a cost-benefit analysis which includes direct and indirect employment effects - quantified if possible - and an explicit indication of the internal rate of

return, the net present value and cost/benefit ratio;

- indication of environmental impacts;
- other information regarding consistency with EU and national legislation.

The appraisal and selection procedures are similar for all projects. The proponent must provide all significant information in order to enable the Commission to make an ex-ante appraisal. The state proposes the project through the ISPA national coordinator. Applications are examined by the ISPA directorate for DG Regional Policy. The EC can ask for additional information on specific issues if the information provided is not sufficient to express an opinion. Once the project is acceptable, it is submitted to the ISPA Management Committee for approval.

In the case of the ISPA program, the EC creates general framework requirements for project applications. However, the government is responsible for the content and the quality of the documents submitted. Once the national coordinator gathers all the necessary documents they are supplied directly to the ISPA directorate in DG Regional Policy. In practice, government accountability towards the public in this process is nil. In most cases the public has neither access to the applications nor the studies prepared as part of the application (apart from the Environmental Impact Summary (EIS)).

For instance, the public is not even informed when an application is submitted. In Bulgaria, public access to the application form for the Ljulin Motorway project was denied even one year after the project was approved. At the same time NGOs received evidence that the application form contained misleading information regarding the EIA procedure applying to the project. By chance only the affected population contacted the ISPA directorate prior to the project approval. Thus DG Environment looked more closely at the EIA's compliance with the EU EIA Directive and requested a new public consultation and new EIA decision in the ISPA Financial Memorandum.

In addition, the Commission, which in case of ISPA projects has the role of decision-maker, does not have access to all project relevant information. In the project presented from Slovakia, for example, the contract between the private company and the public beneficiary of the ISPA grant was not dis-

closed during the appraisal process. Only one year after the approval, the EC examination showed that the conditions in the contract contradict the public interest and could undermine the social benefits and economic viability as requested by the ISPA rules.

The project appraisal process within the EC starts after the application form is accepted. The content of negotiations between national governments and the EC about project quality is not made available to the public. There are several stages of the appraisal process that are crucial for stakeholders as for example results from the first and second inter-service consultations. Potentially, affected people and interested NGOs could express their concerns in a letter to the ISPA Directorate using the address available on the Commission's website. However, there is no guarantee that their views will be considered. Furthermore, the lack of information regarding the appraisal process may completely marginalise public opinion.

The opinion of the ISPA Unit directorate on the specific project prior to the ISPA Management Committee approval is also not made public. The public does not have any chance to assess how the ISPA principles and conditions are taken into account during the project's appraisal and selection.

Finally, once the project is approved, there is no mechanism allowing for the decision to be appealed on the grounds of project incompliance with either EU legislation or ISPA program principles. At the same time, the possibilities to appeal against the government's decisions on the national levels are still very low due to unreformed judicial systems and/or non-sufficient enforcement of the EU legislation in most of the CEE countries. In April 2003, a Czech NGO filed a court case for non-exemption from the protection of endangered species in the D8 motorway construction. No court decision has been issued yet, but it will be unlikely to stop funding coming from the ISPA program. Additionally, once the EC approves a grant where there has been a legal case against a project's realization, incentives for future judgments in favour of project realisation could be created.

Appealing against a decision from the ISPA Management Committee is still very complicated for citizens from CEE countries. It is our belief that the EC should consider the establishment of an ade-

quate mechanism, available for CEE citizens, for appeals against the results of EC appraisal and management committee project approval.

Appraisal of the social and economic benefits from the projects

It is striking that in most of the CEE countries NGOs had difficulties in finding information regarding the social and environmental assessments of projects. Access was even officially denied by the national ISPA coordinator when the CEE Bankwatch member group in Bulgaria requested the application form and cost-benefit analysis for the Ljulin motorway. A court case under Bulgarian legislation on access to public information is pending at the moment. Another CEE Bankwatch group in Slovakia has repeatedly requested disclosure of the contract between the final public beneficiaries of the ISPA fund and the private corporation which seemed to include provisions that privilege private corporations at the expense of municipal companies and consumers³. Therefore, the group filed a court case against the Ministry of Environment for violation of the Act on Free Access to Information.

Even in the positive case in Latvia, information regarding costs and benefits of the project provided during discussions on the EIA report was very general and no separate public discussion took place on this topic. The public were also not consulted during the preparation of the feasibility study.

Recommendations for the appraisal process

- The European Commission should ensure that the national government makes publicly available all the project relevant information prior to the application form submission to the ISPA. This information should include all documents regulating the legal relationships of final public beneficiaries of the ISPA fund or the Cohesion Fund with private operators of public facilities. Changes in the project related documentation at the time of the project appraisal and implementation should be also made publicly available in a timely manner.
- The EC should make information on the projects applying for ISPA funds available through its

³ Final report of the expert team of the European Commission "PPP/SK/01/TR, Framework Contract for Provision of TA for Analysing and Monitoring PPP Operations in ISPA Countries Review of 6 WWTP ISPA Measures in Slovakia" May 2002 (<http://www.vlada.gov.sk/phare/final-report.pdf>).

website and should include the timeline of the appraisal process for all project applicants.

- The EC should consider possibilities for also gathering public opinion on specific projects when an appraisal is conducted, especially if the Commission representatives make field visits to the CEE countries during the appraisal period.
- Project selection processes must ensure public control, e.g. with the participation of experts nominated by non-governmental organisations in the project selection committee, steering committee, etc.
- The project documentation must include identification of companies that might gain undue financial or economic profit from the ISPA or Cohesion Fund. Each submitted project must have explicitly defined measures to prevent undue profit from the public funds. Information on these prevention measures must be made accessible to the public.
- The EC should consider creating a simple and easily accessible compliance mechanism for ISPA projects - and also in the future for Cohesion projects - to assess their compliance with EU legislation.
- Every ISPA and Cohesion Fund project should have its own steering committee. It should be established early in the preparatory stage so that it can have a guiding influence on the feasibility studies' process. Such steering committees should have NGO representation as well as representation from local grassroots groups from the potentially affected communities. Big infrastructure projects need significant financing from the public sector and by taxpayers. It is therefore essential that the preparation of such projects is not done by just a small group of experts.

(b) Compliance with EU environmental legislation

Grant assistance from ISPA to the acceding countries can be used for large infrastructure investment into transport or environmental sectors. It is therefore expected that such projects might have significant negative environmental impacts. The mechanisms for preventing and limiting such impacts are Strategic Environmental Assessment and Environmental Impact Assessment procedures. These procedures have been used differently in acceding countries. Even though there is a legal framework, the environmental assessment process-

es often fail because of vague and non-enforceable provisions and conflicting political interests.

Strategic Environmental Assessment (SEA)

CEE Bankwatch Network and FoE Europe's first joint report *Billions for Sustainability?* illustrated that only one country, the Czech Republic, carried out an SEA on the National Development Plan⁴, a key programming document which set the framework for the use of EU funds. Subsequently in Poland, too, such an assessment was partly done following NGOs' own initiative. Although the SEA in Czech Republic could have been a good example regarding the decision-making process, it had a minor reverse impact on the already approved list of the projects⁵. Later on the ISPA related strategy was updated in most of the countries⁶. Once again SEAs were not envisaged. In addition, NGOs were most often not consulted nor were their opinions taken into consideration.

The legislation for the environmental assessment of the programs and strategies existed in most of the CEE countries even before the EU Directive on SEA. ISPA programming paid very little attention to this, and governments only followed the formal requirements that pay attention to the process of program and project development.

Environmental Impact Assessment (EIA)

It is especially important that EIAs be carried out professionally, independently and at the earliest possible stage in the project cycle. Both project sponsors and funders should be flexible and should accept any significant changes to project design if an environmental assessment which has been carried out deems such changes necessary. Using environmental assessments just because they are required and then not actually implementing particular suggestions drawn from these important assessments makes them meaningless.

In most of the presented cases in this book, the EIA process came only after the decisions had been taken on the concrete project characteristics (e.g., project site, motorway route, technology etc). Thus the Environmental Impact Statement (EIS) serves as a justification of the decisions taken rather than information which would influence the decision.

⁴ The key document for the use of the ISPA funds

⁵ SEA was finalised in 2001 when most of the projects from the preliminary ISPA list were at an advanced stage of development. Furthermore the Czech government did not strictly follow the SEA recommendations

⁶ For example, Estonia 2002, Bulgaria 2003

The possibilities to select less environmentally harmful projects are seriously diminished and the value of public opinion seriously denigrated. For example, in the Estonian case, the EIA procedure was carried out only after the specific project site was selected by the private company promoting the project. The opportunity for the public to choose the less harmful option was undermined.

Furthermore, alternative possibilities for solving problem projects are often neglected. In Estonia, the need to replace more than 200 small landfills with only seven big regional landfills is still to be proven and adequately explained. As the opening of the first new regional landfill shows, the waste depositing price for clients may immediately almost double. As the transport costs also rise significantly, the probability of illegal waste dumping may increase. The respective national authorities must be responsible for considering such issues already in the programming phase and the EC must ensure that there are coherent longer-term national sectoral strategies in order to prevent the development of a number of end-of pipe projects that preclude a systematic approach, duplicate each other or create a basis for new, predictable problems.

Scoping procedure

Of particular importance is the scoping procedure, where the decision-maker should play a proactive role to involve the interested public. For example, in the Czech Republic, SEAs were conducted on NUTS II, NUTS III levels for various concepts, but the public were given no chance to discuss the scope and content of the scoping meetings and had to find alternative ways to address the SEA experts. In the Ljulin Motorway case in Bulgaria, NGOs and affected citizens were invited seven days before the scoping meeting, with neither clarification on the purpose of the meeting nor preliminary materials provided. Even at the meeting itself the project promoter failed to explain the planned outcomes of the meeting and therefore the discussion concluded fruitlessly.

A positive example of a meaningful scoping procedure is the Latvian case. The scoping meeting (February 10, 1999) for the case concluded with an unclear outline of public concerns. However, later in May 1999, a survey was done to find out the

detailed opinion of affected people. The results of the survey, showing the opinions and arguments of all the homeowners, are included in the final EIA report as an annex.

Quality of the environmental assessment

Most of the presented cases have involved poor quality EIAs on the ISPA co-financed investment projects, showing that EU officials do not pay enough attention to such processes. A poor quality environmental assessment can seriously compromise the overall quality of an investment project as well as cause predictable and irreparable damage to the environment.

Two striking issues were observed as part of the EIA procedure: low quality of Environmental Impact Summaries and absence of effective public participation in the EIA processes. Thus the EIA procedure very often loses its defined role as a mechanism to prevent and mitigate potential environmental impacts from a whole project cycle.

The Road Executive Agency of Bulgaria has on four occasions been requested to thoroughly investigate the environmental impacts of the Ljulin motorway, an 18 kilometre motorway within corridor IV of the Trans-European Network. However, none of the EIS for the Ljulin Motorway comply even with one quarter of the requirements of the EC guidelines on EIS preparation⁷. In the Polish case, the detailed analysis of EIS on the S-1 expressway, together with interviews conducted among public administration representatives, showed incoherence with the EU EIA Directive (85/337/EEC) and Habitat" Directive (92/43/EEC). In the Czech Republic, the EIA takes into account neither the provisions of EU Directives (Birds and Habitats) nor aspects of the Bern convention. The EIA takes no account of climate change aspects, where there are serious concerns arising from the fact that the future motorway will, within 20 years, generate four times higher vehicle numbers.

Only in the Latvian case, in addition to evaluating the direct impact on the natural environment, the EIS also evaluated such aspects as the project's impacts on biodiversity, land value, cultural heritage, air quality and human health.

⁷ Guidance on EIA, Scoping, EC (June 2001) and Guidance on EIA, EIS Review, EC

Recommendations for better compliance with EU environmental legislation:

- Strategic Environmental Assessments and Environmental Impact Assessments should be obligatory and need to be carried out according to both existing legislation and the best available practices. The EIA process should be conducted according to EU Guidance on EIA procedures and in compliance with the Habitats Directive and international nature protection treaties such as the Bern Convention. No funds should be allocated for projects violating the EU guidelines on EIA procedures and nature protection directives and treaties.
 - The EIA and SEA processes are to be fully participative. All stakeholders, including potentially affected communities and NGOs must be involved from the scoping stage until project evaluation and monitoring.
 - The undue influence of a project sponsor or funder over the EIA and SEA process outcomes for political or economic reasons should not be tolerated. Environmental evaluation processes have to be carried out in a professional manner, and not in such a way that provides convenient rubber-stamping for pre-cooked decisions. Both the project sponsor and funder should be flexible and accept significant changes to the project design if the environmental assessment deems such changes necessary.
 - During the environmental assessment processes, alternative solutions including "zero" alternative must be seriously assessed and discussed. The practice where the EIA and the SEA are conducted at an advanced stage when the choice of alternatives for the location of the project has already been made should not be acceptable.
 - The EIA procedure should be conducted together with the preparation of the feasibility study, making it possible for a parallel assessment of the different location alternatives from the economic, environmental and social perspectives.
 - The EC should verify the quality of the EIS and public consultation processes in those cases where affected citizens present evidence that the environmental impacts are not being sufficiently addressed and where their opinion is being neglected without explanation.
 - Evidence of relevant public opinion and how it has been taken into account should be enclosed with the EIA documentation. All public comments must be seriously considered by the respective authorities. Those whose comments are rejected must get written explanation of the reasons for rejection. Governments should be accountable where public concerns and valid arguments have been ignored or neglected.
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Bulgaria: The Ljulin motorway takes all the wrong short cuts

Project background

The road between Sofia-Pernik, a section of the Trans European Corridor N4, is one of the few routes in Bulgaria that can justify the construction of a motorway. The present road causes serious traffic jams and air pollution as it passes through the narrow and badly maintained streets of one of Sofia's districts. The design of the Sofia-Kulata motorway was initiated in 2000 under an EU Phare program grant and Sofia-Pernik, the first section, is called the Ljulin motorway. In 2002, the Ljulin motorway received a grant of EUR 111m for its construction from EU ISPA program.

Project development phase

EIA procedure

Two possible Ljulin motorway alignments were analysed in the first Environmental Impact Assessment (EIA) made in 2001. Both routes were set to seriously affect the Bankya Balneotherapy Resort and the settlements within its sanitary area. Thus local people objected to the motorway's construction during the public consultations held in September 2001. The Minister of Environment subsequently returned the EIA report, asking for further investigation into the possible alternatives.

Six possible alignments for the Ljulin motorway were assessed in the second EIA report which appeared in March 2002. The Ministry of Regional Development (MRD) decided on the alternative to be constructed when the EIA procedure was in process and public consultations had still not been held. Consequently, a "new" third EIA report (September 2002) was prepared and the EIA expert team changed its conclusions, stating that the route selected by the MRD was the optimal route from the environmental point of view.



Public consultation for Ljulin Motorway

The third EIA report has never been discussed with the residents of the affected settlements, as required by Bulgaria's EIA legislation. However, the Minister of Environment and Waters approved the route which was suggested in the third EIA report for construction. This route approved by the two Ministries, then, is not in reality a new alternative, but a combination of the two variants initially rejected by the public in 2001.

EC involvement: appraisal procedure and implementation monitoring

During the appraisal of the Ljulin motorway project for the ISPA program grant, it was concluded that the EIA procedure undertaken was in violation of European legislation. To move the project along, a

Project facts and figures

- Project facts and figures:
- Ljulin Motorway is 19,086 km long
- Total project cost of the project EUR 148m

compromised decision was made: the grant was approved with the condition that "a new consultation of the public and relevant environmental authorities has to be carried out before the end of the first quarter of 2003 based on the revised final Environmental Impact Assessment Study, along with the issuance of a new environmental permit taking into account this consultation." (art.8.3, b) of ISPA Financial Memorandum 2001/BG/16/ P/PT/004)

Implementation of the ISPA Financial Memorandum (FM)

The detailed design of the selected route continued without the timely implementation of the conditions stated in Article 8.3 of the ISPA FM. The new EIA procedure was started only in July 2003. The fourth EIA report assessed only the selected route and no alternatives, thus seriously decreasing the scope of the previous EIA reports. No corrective and mitigation measures were discussed in the report as the Ljulin motorway "was in a very advanced stage of development". Overall, the quality of the EIA report and the public consultations were not in compliance with the best practices of the EU according to analyses conducted by NGOs.

Transparency of the project application and project related documents

In October 2003 the environmental association "Za Zemiata" requested the Application Form and Cost-Benefit Analyses (CBA) of the Ljulin Motorway from the Ministry of Finance¹. The Application Form contains the basic information for the project objectives and technical characteristics and one of its annexes is the CBA. This information was denied by the Ministry of Finance, with the explanation that "the application form is reflected in the Financial Memorandum (FM) and, the FM is on the web site of the Ministry of Finance."

In fact the Financial Memorandum does not fully represent the information from the Application Form, and its complete published version² is not available on the internet. Za Zemiata has brought a court case against the Ministry of Finance for not providing public information.

Conclusion

The Ljulin motorway development project is a highly illustrative case of the Bulgarian government's attitude towards the implementation of and public involvement in environmental legislation. The case is even more interesting because of the European Commission's attempts to play an active and positive role in the Ljulin motorway development. Unfortunately, to date, this has not led to project improvements for the benefit of local people and nature.

In a September 2001 letter to Bulgarian NGOs, Commissioner Wallstrom stated that "following the requirements of the legislation of the European Community, the EIA would have to be carried out for the whole motorway (Sofia - Kulata) at the same time"³. However the motorway was divided into three sections and the Commissioner's demand for a thorough corridor assessment, giving more possibilities for mitigating negative environmental impacts, was neglected.

In November 2002, by including conditions in the project's financial memorandum, the EC acknowledged that public opinion had not been properly taken into account. The investor started the new consultations as demanded by the EC only half a year later, by which time no changes to the project design were any longer possible. Furthermore, Bulgarian NGOs have recently learned that opinions expressed by the public will not be considered, as the Ministry of Environment does not intend to revise the project approval.

While Bulgarian NGOs appreciate the EC's to mitigate the negative environmental impacts associated with the Ljulin Motorway project, we consider that the Commission has sufficient leverage to make the Bulgarian government accountable for its current lack of respect for Bulgarian and EU legislation.

Thus the EC should approve project funding only after a full and thorough check of the project's compliance with EU legislation. Additionally, the EC should consider creating a simple and easily accessible compliance mechanism for ISPA projects for affected citizens to assess their compliance with EU legislation.

¹ The Ministry of Finance is an ISPA Coordination Unit in Bulgaria.

² Annexes II (Financial Plan) and III (ISPA provisions) are missing

³ Margot Wallstrom September 13, 2001, Brussels, A(01)11217 D(01)1773 D(01)130678

Czech Republic: The D8 motorway bulldozer approach

Project background

The so-called D8 Motorway, connecting Prague with the German border, is seen as an important part of both national infrastructure and Trans European Corridor N4. The 0807 section of the D8 Motorway passes through Eastern Krusne Hory which has the characteristics of a Special Protected Area according to the Birds Directive 79/409/EEC. The motorway construction has undermined the designation of Eastern Krusne Hory as future NATURA 2000 site. The Czech government received a loan for the 0807 section construction from the European Investment Bank (EIB) as well as a grant from EU ISPA Program.

The Strategic Environmental Assessment (SEA) for the Transport Network Master Plan, carried out in 1999, recommended two alternative routes for the D8 Motorway. The recommendation of the SEA report was not taken into account. In February 2003, the EIB approved the loan for the section without making the decision public. In September 2003, the Czech ombudsman demanded a solution that would take into account the environmental sensitivity of the affected areas. Two months later the European Commission officially announced approval of ISPA co-financing for the project without considering the demand for an alternative route.

Project development phase

EIA procedure

The Environmental Impact Assessment (EIA) procedure carried out in 1996 doesn't specifically focus on the provisions of the EU Directives 79/409/EEC (Birds Directive) and 92/43/EC (Habitats Directive) or on the Bern convention aspects. The final EIA report had a number of deficiencies that put it in conflict with the Czech and European EIA legislations



2 short tunnels - these are the mitigation measures for Krusne Hory

such as: non-consideration of alternatives; lack of evaluation of the indirect effects and climate change effects; insufficient analyses and so on.

The later mapping for NATURA 2000 documented that several valuable fauna species (among them corncrake, hen harrier, lynx) and habitats will be affected by the motorway and traffic, but there was no willingness from the project promoter to consider mitigation measures for the 0807 section.

The SEA took place several years after the corridor for the D8 highway had been selected. The SEA's final statement recommended going back and evaluating the option of routing the highway through a corridor that would have a significantly smaller impact on the Krusne Hory mountain plateau. However, the SEA recommendations were neglected by the government.

Project facts and figures

- 0807 is 23,3 - kilometer long section of D8.
- Costs of the project: D8, The Trnava-Eastern Krusne Hory section: EUR 634m.
- The portion of ISPA money equals EUR 58 million.
- The EIB's loan for the section (according to DG Regio) is expected to reach up to EUR 400 million.

Legal aspects and the position of the Czech ombudsman

The approval proceedings of D8 are bound up with deficiencies and inaccuracies. In the case of the Eastern Krusne Hory, additional to the irregularities regarding EIA and SEA, there were also illegal construction works on project subparts and illegal tree cutting on the building site. These deficiencies led to official procedures that, among other things, may lead to penalties and delays that will, very likely, result in extra construction costs.

NGOs consider that the core of the problems lies in the failure to assess alternative routes and measures (e.g. longer tunnels) of the D8 that should have been taken into account in order to avoid significant impacts on the natural and landscape values. The NGOs' standpoint was also supported by the conclusion of the Czech ombudsman in September 2003:

"... When taking the Government decision about the Master Plan of the Transport Network Development till 2010 it is clearly mentioned in the Annex that in the D8 case an alternative route shall be considered in the case that Germany would find it possible to link it to the German road network ... From the Annex it is apparent that this option, which is environmentally most acceptable, was still in place in that time."

Social and economical aspects of the project

The section 0807 from the D8 only makes sense from the point of view of trans-European freight traffic. When deciding on the motorway route, however, an alternative link via the Most region (R7 + R28), which is the most structurally disadvantaged region in the Czech Republic, was neglected by the government. This alternative could have saved the development potential of the Eastern Krusne Hory as a tourist area.

The D8 motorway is part of the Czech Transport Master Plan which is expected to boost development and help in the creation of jobs and the mobility of the labour force. However the financial backing for such an ambitious plan is insufficient and at the same time there is a lack of resources for the maintenance of pre-existing road infrastructure safety parameters. Thus Czech NGOs plan to ask for an appropriate cost benefit analysis of investments in the transport sector when the Master Plan is revised in 2004.

Transparency and public access to decision-making

In principle, the public has access to the decision-making around the main stages of project preparation (EIA, SEA, land use proceedings, construction proceedings). However, the main problems with sections of the D8 motorway remain in the pre-selection of options that were considered and the unwillingness of the authorities to take more alternatives into account from the very beginning of the process. And this has happened not only to the public or NGOs; SEA expert team recommendations and numerous requirements of the Ministry of Environment were not taken into account either. Other than this crucial deficiency, in some cases NGOs are not informed about the beginning of the proceedings, they do not get copies of the materials, their recommendations are automatically neglected, and they are the targets of hostile media campaigns from the side of the authorities.

EC involvement: appraisal procedure and implementation monitoring

The decision-making of the EC about the ISPA contribution and the EIB loan has remained hidden. The EC did not provide information to the public for the conclusions of the D8 consultant's mission from April 2002 although it was specifically asked for. The ISPA contribution to the D8 section was approved by the Commission in July 2003, but publicly it was only announced in November.

In the case of the EIB, we have even witnessed the bizarre intention to keep the information confidential. In February 2003, the Bank refused to make public the information that the loan for the D8 motorway construction had been approved at its Board of Directors meeting and used false arguments as to why it could not provide this information to the public. The EIB stated that it couldn't provide any information about the loan approved, pointing out that it was asked by the Czech Government not to do so before such loans were approved the Czech parliament. However, when we asked the Czech Ministry of Finance, we got the reply that: *"no request exists on the part of the Czech Government in any form, where the Government would ask the EIB not to provide information to the public regarding approved loans/projects that were still to be approved by the Czech parliament."*

In autumn 2003 the COWI consultancy reported results of its investigation into what went wrong in the project approval process and why. It came to the conclusion that the project is controversial from the environmental point of view. It also provided an explanation of why, according to COWI, the Commission decided in favour of ISPA co-funding for the project in spite of this fact.

The following main aspects of the decision were outlined:

- There is strong political willingness from the EC to provide money for the trans-European project (for political reasons and for the prospect of linking the EU and acceding countries)
- The fact that when EC decision-making came into place, the project preparatory process was already too far advanced to influence the shape of the project substantially; therefore, the Commission limited itself to demanding longer noise walls as the main mitigation measure.

As a result, COWI concludes that if the Commission had been involved in time, it would probably have had a greater influence on the quality of the project planning process. Nevertheless, the comments to the COWI report provided by the EC (DG Regio) says that the EC will always come in at the latter stages of a project, because the EC funding model expects that the member states submit the request for funding when the project stage already allows the decision about funding to take place.

Maybe this is the expectation of the Commission, but the reality is completely different. It is standard practice for states to submit a list of projects to be funded in the future, even without having the basic project details specified, including the route of the transport link. Currently, this can be seen in the Czech Republic's request from spring 2003 to finance a waterway link between the town of Breclav and the Danube from the Cohesion Fund without having elementary issues like the project route clarified or even the SEA and EIA procedures carried out. It is therefore obvious that the Commission's involvement from an early stage is expected by the member countries. If it was willing the Commission could significantly influence the final shape of projects.

Conclusion

It can be said that the D8 project represents an example of pre-1989 decision-making that was typical in its refusal to consider alternatives and in its ignorance to both public opinion and the project's environmental impact. Civic organisations have promoted alternative routes for the D8 since the early 1990s, but their arguments, together with the SEA experts' recommendations from 1999, were ignored. Environmental groups contacted DG Environment and DG Enlargement and pointed out the conflict between the EC's investments in this capacity road (through the ISPA and the EIB) and EC's requirements for nature protection. They also filed a complaint about the project's negative impacts on the areas that fulfil the conditions for protection according to Directives 79/409/EEC (Birds Directive) and 92/43/EC (Habitats Directive). By supporting the project financially, and with implementing only cosmetic mitigation measures, the EU is contradicting its alleged concept of integration of environmental aspects into all sectors of development planning.

The decision to support the project from the ISPA Fund might be seen as a result of the project's 'long history' where the EU came in 'too late' to change it significantly after all the formal approvals made by the Czech authorities were already issued. However, it is our strong belief that the Commission should be more pro-active in demanding that all the environmental requirements are reflected in the project preparation process from the project's outset. In particular we think the role of DG Environment should be strengthened in order to identify from the beginning which projects are completely feasible, which ones need to be modified, and which ones should be abandoned in case EC co-funding and fulfilment of the basic regulations (like the Birds, Habitats and Water Framework Directives) is required. Otherwise the question will continue to be raised of whether the quality of the whole decision-making process is important to the Commission at all. Maybe it is, and it is only favouritism towards the trans-European projects that makes the Commission not take environmental 'details' into account. But why then does it have so many declared environmental principles in place?

Estonia: Poor planning process slows landfill construction

Project background

The North-West Estonian regional waste management centre and landfill was one of seven big regional landfills planned to replace the old 269 household and industrial landfills in the country. The ambitious program aimed to fulfil Estonia's obligations towards implementation of the EU Landfill Directive 99/31/EC. As the safe closure of existing small landfills and establishing a system of new regional waste management centres and landfills is very costly, ISPA and Cohesion Fund co-financing is planned for the construction of all such new regional landfills. The North-West Estonia Waste Management project was included in the national environmental ISPA pipeline in 2002.

The program for compliance with the EU Landfill Directive is a typical example of Estonian policy-making in the past few years. The EU requirement has been fully adapted into national policies without much additional thinking or priority setting. NGOs have suggested that waste prevention and minimization be key priorities for the project in the waste sector, but their views have been ignored. Thus the national ISPA strategy concentrates on an end-of-pipe approach, and the construction of a few big regional landfills is the cornerstone of the waste policy.

Project development phase

The Estonian subsidiary of the Swedish transnational waste management company Ragn-Sells carried out a study on suitable locations for the North-West Estonia regional waste management centre in 1998. The company preferred the Ääsmäe site in the Saue municipality although this site received only the third best screening score. Detailed studies and EIA procedure were only done for the Ääsmäe site.



EIA procedure

In January 2002, Ragn-Sells submitted an environmental memorandum to the Saue municipality where the selected site is situated. Both the EIA report and the participation process were handled in an extremely poor manner by the EIA consultancy throughout 2002. Although both the local population and NGOs identified a long list of unaddressed issues in the first draft of the EIA report, most of them were not addressed in the final version in November 2002. It also turned out that while comparing the chosen site with alternative ones, many deliberate calculation mistakes were present in the report in order to show the selected site as the best option. As a result, NGOs called for the cancellation of the main EIA expert's professional licence and a court case was started by the Estonian Green Movement-FoE, which is currently ongoing in 2004.

Project facts and figures

- The landfill will serve an area of at least 120,000 people
- 94,000 tons of municipal waste will be collected per year
- The Ääsmäe site is situated 15 kilometres southwest of Tallinn, close to the Via Baltica road

It became clear that the Estonian subsidiary of the Swedish Ragn-Sells company did not take the process very seriously. Thus both the developer and the EIA consultancy company took the EIA process rather as a necessary 'ticking of the box' exercise. Regrettably, the EIA process is regarded by the promoter as an unnecessary burden, not as a tool for increasing the quality of the project and for increasing support from the local population. Under such pressure, private companies that are being contracted for carrying out comprehensive EIAs often participate in a 'race to the bottom' of the selection process. The Ministry of Environment, which is responsible for approving EIA reports, is also not strong enough to ensure the lasting quality of the EIAs.

Project promoter and public participation in the project

The main project developer is Ragn-Sells, and only five percent of shares in the waste management centre will belong to the municipalities from northwest Estonia. While the ISPA environment strategy total project costs are estimated at Euro 7m, the Ragn-Sells company has itself recently calculated the total costs to be Euro 10m. Some Euro 5m of the ISPA grant was expected by the company. Ragn-Sells has indicated that in case ISPA co-financing does not materialize, it will finance the project with bank loans. Raising funds directly from the capital market wouldn't be a big problem for Ragn-Sells. Its turnover in 2002 was Euro 8m with profits of Euro 0,6m. Ragn-Sells is the second biggest waste company in Estonia, with 30 percent of the market share. A doubt remains as to why the Estonian Government proposed that the project should be financed with public money from the ISPA program when alternative funding is available. As a result of public pressure, the Ragn-Sells company abandoned the Ääsmäe site in December 2002 and started a new process for finding a location for the regional waste management centre.

In addition, according to legislation, only municipalities can be responsible for the development of the waste management infrastructure. As the project is regional, all the municipalities of the served area should have been involved as interested parties. The regional waste management centre and landfill is also a national project where strong guidance from

the Ministry of Environment is needed. It should have been a task for the government, not for a private company, to identify and decide the location of the regional landfill. Thus the very framework of the project has remained unclear, causing many misunderstandings and frustrations.

Conclusion

- The very need for replacing more than 200 small landfills by only seven big regional landfills is still to be proven and explained. As the opening of the first new regional landfills has shown, the waste depositing price for clients may immediately rise by almost twice as much. As the transport costs to such new big regional landfills rises significantly, the probability of illegal waste dumping into natural sites will also increase. The Ministry of Environment should take the lead in such a calculation and therefore remain independent from lobbying by private waste companies.
- The regional waste management centre/landfill is an object of national importance. Therefore the preparatory process (site selection, feasibility study, etc) should be either directly carried out by or at least strictly guided by the Ministry of Environment. It was a failure that the ministry allowed a private company to direct the entire process, causing a great deal of misunderstanding. For the continuation of the project, as well as for similar future cases, the ministry must set a clear framework and guidelines.
- The development of waste management infrastructures is a task for local municipalities. It was unfortunate that the private company Ragn-Sells did all the preparations for the new regional waste management centre and landfill without fully involving the municipalities of the region. Fortunately, after the failure with the first proposed site for regional landfill, a joint company with 11 municipalities was formed in late 2003. The forming of such a structure should become standard practice for future similar cases. The framework for future governing should, however, be set in the early stage of project development. It would be much preferred if a private company did not have a majority share in such a joint venture in order to ensure affordable prices for waste handling.

Hungary: Learning the hard way with the Szolnok waste management system

Project background

When it comes to solid waste, Hungary currently lags far behind EU standards. At the moment only three percent of municipal solid waste is reused or recycled. Only 15 percent from the 665 landfills in the country complies with current regulations on waste landfilling. In addition to this, there are around 2000 landfills which are closed, abandoned or illegal. In view of this, as well as the fact that most of the landfills are reaching their capacity limits, it was decided that up-to-date regional landfills should be built, and that the small polluting landfills close to settlements should be closed down. One of the projects financed by ISPA funds in 2000 with that aim is the Szolnok Region Waste Management System.

Project development phase

The selection of the Kétpó area for the Szolnok regional solid waste landfill was the result of a study which assessed four areas from an economic point of view. The landfill will be on 40 hectares of land that used to be agricultural land. The Kétpó site is situated 30 km from Szolnok – where the majority of people live – and this significantly increases the transportation costs and the environmental load. Furthermore a new 18 km road needs to be built to provide access to the landfill. An interview with the mayor of Szolnok (in a regional daily newspaper on February 19, 2001.) shows the real “evaluation method” of the selection: “In this situation it must be taken into account that no other settlements are



allowed to build the landfill on their territory, so there is no alternative but Kétpó.”

EIA procedures

An EIA was only prepared for part of the project, i.e. the landfill in Kétpó. According to Hungarian EIA legislation, there was no need to prepare a full EIA, so a preliminary EIA was compiled in October 1999, three months after the selection of the landfill site. Hungarian EIA legislation also does not make public consultation obligatory for projects with only preliminary EIAs. In this case public involvement was limited to the announcement of the EIA that was placed on a notice board for approximately one month in the municipalities of seven settlements.

There was one public forum organised by the project sponsor on November 4, 1999, where the project was presented and the public asked to make comments. The forum also included a site visit to a nearby landfill, which was completed recently, to show what a modern, up-to-date landfill looks like. The EIA report is available on request in the Regional Environmental Inspectorate in Szolnok. The EIA report mentions neither alternatives to Kétpó, nor the reasons why this site was chosen. Furthermore, in the case of Kétpó, the EIA should point out the ignorance of the regulation stating that only bad quality land or land without agricultural use

Project facts and figures

- The landfill will serve 202 442 people
- The total project cost is EUR 14 522m, where the grant received by ISPA is EUR 7 196m
- Around 260 000 m³ municipal waste will be deposited per year for twenty years.

can be used for landfill sites. Another major problem connected with this site is inland water and floods. The EIA report also excludes any mention of the Hungarian regulations which state that landfills cannot be built on land with inland water and flood danger or on land with no inland water drainage.

Feasibility study

The feasibility study, prepared in 1999, is available at the Regional Environmental Inspectorate in Szolnok. The feasibility study lacks many necessary elements and several deficiencies can be found in its contents. The study fails to assess different alternatives that would serve the same objective as the present project. Another missing aspect is the link between the project and related national and regional programmes. The study does not include a cost-benefit and cost-effectiveness analysis that should be part of the economic assessment of the project. In relation to future waste fees, the financial analysis fails to assess the population's ability and willingness to pay and the fees paid so far.

EC involvement

It has been observed that the European Commission has so far given preference to regional projects in the case of solid waste management developments. For example there was another project concept involving four landfills which could process waste from the Szolnok region. However, these projects were too small to get the support of the EU.

The EC approved only part financing of the project, i.e. the building of the landfill site in Kétpó and the transfer station. The project also includes the closure and re-cultivation of landfill sites in the participating settlements. However, this will be financed from the profits made by the landfill in Kétpó.

Conclusion

The process of examining a project's suitability for financing by ISPA funds has to be very meticulous. Practice shows that the appraisal process is usually conducted in a hurry as deadlines are pressing. This leads to inadequate time being available for the appraisal, environmental impacts are not properly assessed, and feasibility studies do not clearly show the financial and social aspects of the project.

Moreover, the appraisal process should make public involvement a must and not just a superficial add-on to the process. A lack of objections should not be taken as approval. In the case of EU funds, which are used for projects that bring about significant societal changes, as many forums and meetings should be conducted as needed in order for comprehensive understanding of projects.

Hungarian regulations should be observed and not ignored as they were in the case of Kétpó. The first step in the appraisal process of a project should be the examination of whether the project adheres to all relevant regulations. If the project fails to fulfil this requirement, the appraisal should be finished, and the project should not be further considered. Where an exception is made and a project is still in the cluster of applicants, the reason for the exception should be clearly indicated and explained.

In the project selection process the reason for choosing one project instead of another has to be an objective one. As is sometimes seen, ISPA projects are selected based on the preparedness of the project documents. This is not an acceptable reason for project selection as it ignores the whole principle of ISPA, namely to develop those areas that are in the worst situation in a given field.

From the point of view of sustainable development, one bigger project is often worse than several smaller ones. Additionally, projects are very often made bigger than required. The Commission should finance smaller projects from not just the Structural Funds but from the Cohesion Fund too. In the feasibility study and in the EIA, real alternatives, including zero-alternative, should be analysed to compare the environmental impact of the project.

As ISPA funds are directed at the acceding countries in order to help development and compliance with EU regulations, the appraisal and selection processes must aim at serving the same overall objective - to improve, and not to worsen, environmental conditions in Hungary. It is hoped that the European Commission will look into these matters and will enforce stricter regulations by the time the new funds begin to pour into the accession countries.

Latvia: Encouraging signs in Liepaja

Project background

The Solid Waste Management in Liepaja Region project is part of Latvia's National Solid Waste Management Strategy for the period 1998-2010. In order to ensure the implementation of the strategy, the investment program "500-" was prepared. The projects for ISPA financing are selected by the Ministry of Environment from the priority list of projects for the program "500-". This centralised selection mechanism is justified by the fact that Latvia is a small country and the Ministry of Environment has a good overview over priority projects as well as good knowledge of the local situation. Municipalities and regional authorities are also partly involved in this process as they have to secure part of the financing (at least 10-15 percent) for the project.

The Solid Waste Management in Liepaja Region project received an ISPA grant in November 2001.

Project development phase

The Liepaja City Council initiated the Liepaja Regional Waste Management project in December 1998 when it hired a consultancy company to carry out a feasibility study. The EIA process began very soon after the official start of the project. This project was among the first to test the EIA after the adoption of a new EIA law in October 1998.

EIA process

The Terms of Reference (ToR) for the EIA were adopted on February 26, 1999, after a scoping meeting where the public was invited. Two alternatives for the location of the project were analyzed during the EIA process. During the scoping meeting local



The web site for the Liepaja project

people expressed their concerns regarding the proposed sites. As a result, in May 1999 a survey was carried out to find out the detailed opinions of the affected people living within 3 km distance from the sites. The results of the survey, with the opinions and arguments of all affected homeowners, are included in the final EIA report as an annex.

The draft EIA report was discussed with the public and other interested parties during a public hearing on August 15, 1999. Minutes from the public consultations were later included as part of the final EIA report.

The EIA report gives quite a good overview of the situation regarding waste management in the Liepaja region and describes the environmental problems

Project facts and figures

- *The landfill will serve 147 890 people (about 6 percent of the total inhabitants in Latvia)*
- *The total project costs equal approximately EUR 14,433m, with the ISPA grant comprising 63 percent (EUR 8,12m)*
- *Additional funds came from a World Bank loan, a World Bank Carbon Fund grant, SIDA and the national and local governments*

which require solutions. The compliance of the project with EU Directive 75/442/EEC on waste management is not analyzed in the EIA report. However, the general principles of the directive have been taken into account while designing the project, e.g. sorting of waste before depositing it in the landfill; separation of municipal and hazardous waste; decreasing the amount of biodegradable waste that is deposited; ensuring the collection of methane from landfill. However, the project doesn't include the costs that will be needed for the later closure of the landfill and management of the territory.

The EIA report doesn't assess the impact of the project on climate change. At the same time, the project impact on the balance of greenhouse gas emissions in Latvia was analyzed in a working paper prepared by the World Bank. This is due to the fact that the project "Solid Waste Management in Liepaja Region" is the first ever project co-financed from the Carbon Fund.

Additional to direct impact on the natural environment, the EIA also evaluated such aspects as the project's impact on biodiversity, value of land and landscape, cultural heritage, air quality and human health. There were three groups of criteria defined for comparison of the two alternatives: nature aspects; social and human health aspects; and economical aspects (in order of decreasing importance). In the final selection the nature and human health aspects were rated higher than the economic criteria.

Social and economical aspects of the project

The implementation of the project will be beneficial for local development through improvement and reconstruction of local roads that are used for the transportation of waste and for improvements in the quality of the environment through the re-cultivation of old dumping sites. The project implementation company is also coordinating the education of the public on how to separate the waste and why it is needed. Besides this, there is an economic incentive for the inhabitants to separate their waste as they don't have to pay for the disposal of waste if it is separated, e.g. glass, plastic, metal, paper.

Before the start of the project, eleven different tariffs for waste management existed in the region, where the

tariffs often didn't cover the actual costs of waste disposal. Additionally, waste expenses in 1/3 of the municipalities in the regions were covered fully by the municipal budget. The increase and equalisation of tariffs was an integral part of the project, as a step towards integration of the 'Polluter Pays' principle. An equal tariff was set for waste collection, transportation and disposal in the whole administrative territory of Liepaja. The EIA stressed that it might be necessary for other municipalities involved in the project to subsidise the costs of waste management for poorer inhabitants as the expenditures would reach about 1,5 percent of their monthly incomes. However this wouldn't represent a big burden on the municipalities' budgets.

The feasibility study

The feasibility study is available from the World Bank office in Riga within the Project Appraisal Document (released on August 18, 2000). The feasibility study was prepared by the World Bank although the public was not consulted during its preparation.

The feasibility study also includes the cost-benefit analysis of the project, where carbon benefits and other projected incomes are also included. When calculating the viability of the project, the running costs up to 2020 were taken into account, including the closure and remediation of old dumping sites. The Internal Rate of Return (IRR) presented in the final EIA report was noted as 7 percent, but no calculations of this rate were included. The viability of the project is strongly connected to the waste management tariffs that are collected from inhabitants.

Conclusion

Obviously the Waste Management in Liepaja Region will bring positive environmental effects, which are related to the implementation of the 'Polluter Pays' principle and to the closure and remediation of the old dumping sites. Social aspects are respected through the introduction of equal tariffs for waste collection in the whole region, though the actual costs are higher in rural municipalities and considerably lower in towns (mostly because of transportation reasons).

It should be stressed that during the evaluation process of the two possible project sites more atten-

tion was given to the alternative which was friendlier to the environment and human health, even though this entailed higher project costs.

However several conclusions and recommendations remain regarding the EIA and project preparation process:

1) The EIA report didn't include concrete references to the requirements of EU directives on waste management as they were not binding for Latvia at that time. However, as the project gets financing from ISPA, it will be necessary to have clear confirmation on the project's compliance with EU legislation. Moreover, an update of the EIA report might

be needed to allow for the changes in the legislation (new national and EU legislative acts) if the actual implementation of the project starts a few years after completion of the EIA procedure.

2) The feasibility study should be released together with the EIA procedure. The study was released in August 2000, almost one year after the preparation of the EIA report. Thus the data from the feasibility study on the economic effects were not incorporated in the EIA report.

3) Clear information in the early stages of project preparation helps to avoid later misunderstandings and negative attitudes towards the project.

Poland: Collision course with Natura 2000 site

Project background

The most significant amounts of EU funds to be invested in Poland will be used for the development of transport infrastructure, with particular emphasis on road investments. This resulted from the requirement that Poland must adjust its main road network to European Union standards. Unfortunately new kilometres of roads mean new social conflicts and threats to the environment. Although the scope of the problem has not been assessed yet, it is clear that there will be intense discussions and many protests in the coming years.

The S-1 expressway is part of the IV Pan-European Transport Corridor. Its main goal is to ensure a road connection between Poland and the Czech Republic. The Bielsko-Biala-Cieszyn section of the S-1 is financed with a grant from ISPA and a loan from the European Investment Bank (EIB). Implementation of the project includes construction of the expressway through the "Morzyk" natural reserve which has been proposed for inclusion in the Natura 2000 network

Project development phase

EIA procedure

Detailed analysis of the EIA report for the S-1 expressway prepared for the ISPA grant (October 2000) document, together with interviews conducted among public administration representatives,

Project facts and figures

- The Bielsko-Biala- Cieszyn section is 28,2 km long
- Total project construction cost is approximately EUR 157 million



showed incoherence with the EU directive concerning the assessment of the effects of certain public and private projects on the environment (Directive 85/337/EEC) and the directive regulating the conservation of natural habitats and of wild fauna and flora ("Habitat" Directive 92/43/EEC).

The authors of the EIA report limit their assessment of the alternatives to the statement: "The alternative presented for an opinion got the agreement of regional authorities, including environmental protection authorities, Heritage Conservator, Nature Conservator Officer, local authorities and the local community."

There was neither full information concerning the alternatives included nor any rational reasons provided for "the chosen option, including results for the environment" - as Directive 85/337/EEC states.

The important information that the road was going to cross the "Morzyk" natural reserve protected by the Habitat Directive was not given. In accordance with EU financial institutions' policy, the implementation of the planned investment requires the application of the mentioned Directive (among others art. 6, paragraph. 4.), which call for the use of compensation measures in case of a negative assessment of planned action and a

lack of alternative solutions. The authors of the report, showing no practical concern for the Habitat Directive bearing on the project, might have caused a situation where compensation costs were not included in the budget at the stage of application for the ISPA.

There was no public consultation on the EIA report conducted. In the application to ISPA and EIB the promoter referred to public consultations carried out at the end of the eighties and the beginning of the nineties when technical and economic studies were prepared.

As a result of pressure from NGOs, informational meetings were organized in the period from July-August 2003 for the discussion of technical solutions. At this stage, an area planned for the S-1 expressway route was excluded from the "Morzyk" reserve. The final result of the negotiations was that the investor was obliged to modify the project according to Regional Commission of Nature Protection recommendations and the NGOs' proposals. These included compensating for natural losses by including a meadow situated between the eastern and western part of the reserve into the protected area.

EC involvement

According to European Commission recommendations and EIB policy, investments supported by both institutions should fulfil the requirements of European law. Any breach of those conditions should be noticed by experts within both institutions. Nevertheless, in practice things can be different. After the financial memorandum is signed, the money is transferred to the project promoter after obtaining, within the proper time, all permissions requested by law. Interference (from the EIB for example) in the project after the memorandum is signed seems to occur very rarely. A situation where the Bank stops financing after assessing that obtained permissions or project implementation is inconsistent with EU law is not likely to happen. This could only be possible after a court decision with the force of the law.

Transparency and public access to decision-making

Full documentation concerning the planned route was released to NGOs only after seven months from

the date of an intervention letter being sent with concerns to the European Commission and EIB. The EIB broke its practice of a two-month deadline for answering letters, adopted as a part of its Information Policy. Considerable change in the NGO representatives' communication with the promoter came about following a local visit led by European Commission expert Mr D. Lamberts. However, the visit itself raised serious concerns about the transparency of the process (e.g. journalists were asked to leave, taking photos was not allowed, after the meeting the report was not available).

A serious breach of transparency rules and access to information meant that the monitoring of reports of projects financed from the ISPA programme was kept in secret. The Office of the Committee for European Integration refused access to these reports to NGO representatives in the Monitoring Committee, which in practice precluded social control over the use of public money. This case was addressed in the Supreme Administrative Court and is now awaiting a solution according to Polish law.

Conclusion

In order to limiting the possibilities of withdrawal from a signed financial agreement, the European Investment Bank and European Commission should put more emphasis on analysing presented project documentation. Criteria should be based on, among other things, the full Environmental Impact Assessment report (and not only its summary) including a comparative analysis of the alternatives and proposed actions minimizing or compensating for inevitable environmental losses. The EIA recommendations should be reflected in the budget at the stage of project appraisal.

Financial institutions should insist that public consultations are conducted for investments that have significant effect on the environment before the signing of a financial memorandum for a given undertaking. Such a solution will help to avoid conflicts caused by the late inclusion of affected communities into the process at the stage when any changes to the investment plans (e.g. localization of the road) are practically impossible.

An analysis of the development of the transport infrastructure strategy in Poland up to 2013 should be immediately revised with regard to possible social and environmental conflicts. This document should include a proposal of actions designed to eliminate or reduce possible conflicts. Implementation of the Strategic Environmental Assessment procedure would be adequate.

Project promoters should involve interested parties in the process of preparing technical-economic studies as this is the stage which permits detailed analysis of alternatives and, among other things, a different localization of the investment. However, technical-economic studies should in the future be replaced by feasibility studies.

Slovak Republic: ISPA as a potential tool for the undue profit of private firms

Project background

Since the mid 1990s in the Slovak Republic, the transformation of the ownership of state waterworks and sewage enterprises has been underway. Privatisation of the state-owned Trencin Water Company was, according to official documents, to serve as a model for the transformation of other state water enterprises in Slovakia. However, it was obvious that from the very beginning the driving force propelling privatisation was an effort by some of the managers of the Trencin Water Company to acquire property that had been generating profits for some time. They created a private company called TVS, which was the only corporation running for privatisation of the operational property of the Trencin Water Company. The privatisation contract was signed on September 23, 1998, two days before the parliamentary elections in which the ruling coalition lost its power.

The water infrastructure of the Trencin Water Company was transferred to TVK, a company held by the municipalities of the Trencin region. In October 1999, TVK and TVS signed a contract for operation of the water services that became effective on July 1, 2000¹. The operational contract turned out to be very disadvantageous for TVK. In 2000 TVK received a grant from the EU ISPA program for construction of the Waste Water treatment plant.

This case study documents the system deficiencies of project financing from the pre-accession ISPA Fund using the Trencin water treatment plant project as an example. Although the European Commission designated resources from the ISPA Fund (or from the Cohesion Fund) strictly for final beneficiaries from the public sector, the set-up of



these funds enables private firms to gain undue profit from them.

ISPA grant for the Trencin Water Company

The goal of the Trencin Waste Water Treatment project is to eliminate one of the few remaining untreated discharges of municipal wastewater in the River Vah, an important tributary of the River Danube. The final beneficiary is TVK, the owner of the water infrastructure. However the operation of the plant will be carried out by TVS as result of the privatisation process of operational property.

In May 2002, the European Commission published a report on "the legal status of final beneficiaries in

Project facts and figures

- The ISPA grant represented EUR 3 968 366m (50 percent) out of the total eligible project costs of EUR 7 936 732m
- The new wastewater treatment plant is designed to serve a population equivalent to 30 143 by the year 2015

¹ The Contract on renting and operating waterworks and sewage infrastructure in the Trencin region and on providing services related to general repairs and investments dated October 7, 1999.

relation to transformation of the state water utilities and their institutional and professional capacities²". The report's conclusions clearly indicated that the "Trencin Right Bank Waste Water Treatment" project represented a real risk in terms of undue profit for TVS, the private provider of water services.

There were several provisions of the operational contract between TVK and TVS that privileged the private corporation at the expense of the municipal company and consumers. According to the expert report, the most problematic provisions of the contract were connected with the amount of the rent, the guarantee of minimum TVS profits, the management and organisational fees, planning and performing of repairs and investments, accountability for damages, and protection of TVK in case of violation of the contract by TVS. These provisions enabled TVS to increase its profit at the expense of TVK and consumers.

By this contract, TVS acquired 20-year exclusive rights to operate the water infrastructure owned by TVK. For the use of this infrastructure, TVS pays rent in the amount equal to the depreciation of rented property. This is why TVS made constant profits while TVK lost more than SKK 5,6m in the first year after the contract became effective.

The contract guaranteed that fees for water services paid by consumers would cover not only TVS's expenditures for repairs, new investments and all organisational expenses (including full annual inflation) but they would also ensure 15 percent profit. "There is no element of the calculation method which encourages efficiency. On the contrary, the Contract allows TVS to recover the full relevant annual inflation. Normally, and in order to encourage efficiency, only a partial adjustment is allowed."

Repairs and investments of the rented property were to be covered by a major part of the rent as well as from a loan provided to TVK by TVS. TVS itself suggests what repairs and investments in the property of TVK are necessary, and TVS itself sets the price, and the same company also carries out the work.

The contract provides TVK no possibility to sanction TVS in the case of a material breach of the

operational contract, e.g. in the case of delays in repairs or investments. TVK has limited power to control the activities of TVS. TVK can execute only annual inspections regarding the infrastructure, and TVS has a duty to submit annual reports to TVK.

Transparency

The European Commission conditioned the release of the second instalment of the ISPA grant by a change in the operational contract between TVK and TVS. As result an annex to the contract between TVK and TVS was signed on January 30, 2003³.

"The contract was re-negotiated and clearly improved to the advantage of TVK. The Commission has endorsed the result⁴" stated the ISPA Desk Officer for Slovakia at DG Regio, in response to the NGOs request for information. The Implementing Agency confirmed that independent experts introduced several improvements into the contract, however, it refused to disclose the contract between TVK and TVS because TVK declared it a trade secret. In February 2003 TVK also officially refused to release the contract and TVS responded likewise. A request was subsequently submitted for copies of the contract between TVK and TVS to the Ministry of Environment according to Act No. 211/2000 on Free Access to Information. The information was once again denied.

Conclusion

Implementation and monitoring without public control creates the potential for the manipulation of decision making. This was also indicated by Carsten Rasmussen, the ISPA Desk Officer for Slovakia at DG Regio, in the beginning of 2002. Rasmussen stated that concerning the selection of the ISPA project, "The European Commission works on principles of technical standards and criteria; priority are technical arguments, while on the Slovakian side we can notice some political background to the decisions."⁵

2 Final report of the team of experts of the European Commission "PPP/SK/01/TR, Framework Contract for Provision of TA for Analysing and Monitoring PPP Operations in ISPA Countries Review of 6 WWTP ISPA Measures in Slovakia" May 2002 (<http://www.vlada.gov.sk/phare/final-report.pdf>). The aim of the team of experts was to evaluate the preparation and implementation of ISPA-funded waste water treatment projects.

3 Minutes from the 5th meeting of the ISPA Monitoring Committee, March 13, 2003, Bratislava.

4 The letter of Carsten Rasmussen, European Commission, DG Regio, dated on April 10, 2003.

5 Katarina Zackova: "Slovakia is unable to use even the offered allocations from the ISPA Fund". TREND, January 16, 2002.

At the time when the financial memorandum on the ISPA "Trencin Right Bank Waste Water Treatment" project was signed, the European Commission already knew that the provision of water services was assigned to the private company TVS, controlled by the French transnational water corporation Suez Lyonnaise des Eaux / Ondeo. At the same time, the operational contract between TVK and TVS, which was not in line with public interests, became effective. Even though the European Commission could and had to know the conditions of this contract, it granted TVK almost EUR 4m without taking measures that would ensure thorough protection against undue profit for TVS operating the public water property. Such a practice can be in contradiction with the principles of ISPA program financing.

Only when the Commission identified the existing risk of undue profit for TVS did it take steps to improve the situation. However, it denied access to information about the specific results of its intervention. This detracts from the public's ability to execute its supervisory role in the utilisation of taxpayers' money.

Under such circumstances, and due to non-transparent decision-making concerning the selection of ISPA projects, the financial support for enhancement of the public water infrastructure operated by the private sector can become an efficient tool for channelling public funds in favour of private firms at the expense of society, local governments and

consumers. Similar situations may occur with projects in the waste management sector.

In order to guarantee the public interest in the area of services, it is essential that public authorities on both the Slovak and EU sides ensure that the utilisation of public funds strictly respects the following measures:

1. In order to avoid abuse of public funds in favour of private corporations, the provision of financial support from the ISPA Fund (or the Cohesion Fund) for projects in sectors that are in the process of transformation (such as water or waste management) must be conditioned by an explicit definition of the resulting state of the sector after the transformation process is complete (especially the definition of future ownership relationships).
2. The project documentation must include the identification of companies that might gain undue financial or economic profit from the ISPA grants (or from the Cohesion Fund). Each submitted project must have explicitly defined measures to prevent undue profit from the public funds. Information on these prevention measures must be accessible to public.
3. All documents regulating the legal relationships of the final public beneficiaries of the ISPA Fund or the Cohesion Fund with private corporations must be open to the public.
4. Project selection processes must ensure public control, e.g. by participation of experts nominated by non-government organisations in the project selection committee, steering committee, etc.

Abbreviations

CEE	Central and Eastern Europe
EIA	Environmental Impact Assessment
EIB	European Investment Bank
ISPA	Instrument for Structural Policies for Pre-Accession Aid
NGO	Non-governmental organisation
SEA	Strategic Environmental Assessment
DG	Directorate General
EC	European Commission
SIDA	Swedish International Development Cooperation Agency